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*Attorneys for the Official Committee of Equity Security
 Holders of USA Capital Diversified Trust Deed Fund, LLC*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

In re:
USA SECURITIES, LLC,
Debtor.

**JOINT EX PARTE APPLICATION
FOR ORDER:**

- (1) REQUIRING CUSTODIAN OF
DOCUMENTS FOR BYSYNERGY,
LLC TO APPEAR FOR
EXAMINATION; AND
(2) COMPELLING THE PRODUCTION
OF DOCUMENTS
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

[No hearing required]

Affects:

- ☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (hereinafter, the “Bankruptcy Rules”), USA Capital Diversified Trust Deed Fund, LLC (hereinafter, “Diversified”), and the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (hereafter, the “Diversified Committee”), by and through their respective counsel noted above,¹ hereby apply for an order setting the examination under oath of the custodian of documents for BySynergy, LLC, an Arizona limited liability company, and ordering the production of documents, all under Bankruptcy Rule 2004, in relation to the following:

Acts, conduct or property of Diversified and the other debtors in the above-captioned bankruptcy cases (collectively, the “Debtors”), or to any matter which may affect the administration of the Debtors’ estates; and acts, conduct, or property of the Debtors that relate to the liabilities and financial condition of the Debtors, the source of any money or property acquired or any other matter relevant to the cases.

¹ Diversified and the Diversified Committee make this Application jointly because counsel for the Diversified Committee will become counsel to the reorganized Diversified entity subsequent to the Effective Date under the Debtors’ Third Amended Chapter 11 Plan, which was confirmed by the Court pursuant to its order entered January 8, 2007.

Specifically, Diversified and/or the Diversified Committee desire to examine the custodian of records of BySynergy, LLC, an Arizona limited liability company, concerning the obligation owed to the Debtors by BySynergy, LLC, collateral securing that obligation, the status of development of the collateral, and other liens on the collateral. In order to prepare for the examination, Diversified and/or the Diversified Committee require the production of all documents listed on Exhibit A, attached hereto and made a part hereof, prior to the examination.

Bankruptcy Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Rule 2004 of the Local Rules of Bankruptcy Procedure (hereinafter, the “Local Rules”) provides, in pertinent part:

(b) Order for examination. Orders for examination may be signed by the clerk if the date set for examination is more than ten (10) business days from the date such motion is filed....

LR 2004(b).

As set forth above, the date for the proposed examination is more than ten (10) business days from the date of this Application. Accordingly, Diversified and the Diversified Committee respectfully request that the Clerk of the Court docket the Order (1) Requiring Custodian of Records of BySynergy, LLC to Appear for Examination; and (2) Compelling the Production of Documents Pursuant To Federal Rule Of Bankruptcy Procedure 2004, submitted herewith.

WHEREFORE, Diversified and the Diversified Committee respectfully request that this Honorable Court enter an order (1) requiring the custodian of records of BySynergy, LLC to testify under oath on behalf of BySynergy, LLC on the matters outlined above, and requiring that the custodian of records of BySynergy, LLC under Rule 30(b)(6) of the Federal Rules of Civil Procedure be required to appear on February 2, 2007, at 9:00 o’clock a.m. Mountain Standard Time at the Residence Inn By Marriott, 3440 North Country Club Drive, Flagstaff, Arizona 86004; and (2) compelling the (a) production of all documents listed on Exhibit A, attached

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hereto and made a part hereof, at or prior to 10:00 o'clock a.m. Mountain Standard Time on January 26, 2007, at The Residence Inn By Marriott, 3440 North Country Club Drive, Flagstaff, Arizona 86004, or, in the alternative, (b) delivery of copies of all documents listed on Exhibit A, at or prior to 9:00 o'clock a.m. prevailing Pacific Time on January 26, 2007, to Jeffery D. Hermann, Esq., at the Law Offices of Orrick, Herrington & Sutcliffe P.C., 777 South Figueroa Street, Suite 3200, Los Angeles, CA 90017-5855, and to Anne M. Loraditch, Esq., at the Law Offices of Beckley Singleton, Chtd., 530 Las Vegas Boulevard South, Las Vegas, Nevada 89101.

Respectfully submitted this 10th day of January 2007.

BECKLEY SINGLETON, CHTD.

RAY, QUINNEY & NEBEKER, P.C.

/s/ Anne M. Loraditch

/s/ Steven C. Strong

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Security Holders of USA Capital Diversified
Trust Deed Fund, LLC*

Attorneys for Debtors and Debtors-in-Possession

EXHIBIT A

The following definitions shall subscribe to the documents requested:

“Document,” shall mean writings and any other similar materials in your custody, possession, control, whether printed, handwritten, recorded, on disk or other computer medium, or photocopied or otherwise reproduced, and whether claimed to be exempt from production pursuant to a properly asserted privilege or for any other reason, with this definition including, for illustrative purposes and without limitation, all of the following: letters, reports, agreements, communications, notes, correspondence, telegrams, memoranda, computer data and/or messages such as e-mails, summaries or records of conversations or meetings of any kind, diaries, forecasts, photographs, tape recordings, reports and/or summaries of investigations, opinions and/or reports, appraisals and/or other analyses of any kind, notations on any documents (as heretofore described), and all drafts (and revisions) of every such document.

As used herein, the term “communication” means any transmission or exchange of information, whether orally, in writing, electronically, or any other means or mode of transmission or exchange of information.

As used herein, the term “person” means any natural person, corporation, partnership, joint venture, or any other entity or form of organization or association.

As used herein, the term “you” and “your” refers to BySynergy, LLC, its agents, officers, directors, employees, attorneys, affiliates, corporations, entities, representatives, or any other persons acting or purporting to act on your behalf.

As used herein, the phrase “refer or relate” or “referring to or relating to” means constituting, comprising, containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, analyzing, construing, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

The singular form of a word shall be interpreted to include the plural, the masculine gender shall be deemed to include the feminine, and vice versa. If you should have any questions regarding the production demanded hereunder, your counsel is invited to contact the undersigned in advance of the examination date.

1 **YOU ARE FURTHER COMMANDED** to produce at the above-stated time and place
2 the Documents set forth below:

3 1. Any and all documents referring to or relating to the Promissory Note, dated
4 February 3, 2006, in the original principal amount of \$4,434,446.00, made by BySynergy, LLC,
5 in favor of USA Capital Diversified Trust Deed Fund, LLC (the "Note").

6 2. Any and all documents referring to or relating to the Trust Deed executed by
7 BySynergy, LLC, as security for the Note (the "Trust Deed").

8 3. Any and all documents referring to or relating to the status, development, or
9 construction of the real property described in the Trust Deed (the "Project").

10 4. Any and all documents referring to or relating to lot sales, commitments,
11 marketing plans or any transfer of any land within the Project; including, but not limited to, any
12 and all documents referring to or relating to deposits, escrows, payments, commission
13 arrangements, sales agents, brokers, and title companies.

14 5. Any and all documents relating to or referring to any liens on the Project.

15 6. Any and all documents relating to or referring to any loans relating to the Project,
16 including but not limited to any loan agreements and/or trust deeds involving Marshall & Illsley
17 Bank.
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